

**Yamaha Music Manufacturing, Inc. and Industrial Union Department, AFL-CIO. Case 10-CA-24528**

February 28, 1991

**DECISION AND ORDER**

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On August 22, 1990, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Yamaha Music Manufacturing, Inc., Thomaston, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

*Mary Bulls, Esq.*, for the General Counsel.

*John R. Crenshaw, Esq. (Crenshaw & Johnson)*, of Atlanta, Georgia, for the Respondent.

*Harold McIver, Organizing Director*, of Riverdale, Georgia, for the Charging Party.

**DECISION**

**STATEMENT OF THE CASE**

HOWARD I. GROSSMAN, Administrative Law Judge. The charge was filed on January 3, 1990, by Industrial Union Department, AFL-CIO (the Union), and complaint issued on February 2, 1990. It alleges that Yamaha Music Manufacturing, Inc.<sup>1</sup> (Respondent or the Company), in early December 1989, solicited its employees to report to Respondent the union activities of its employees, and prohibited its employees from talking about the Union during working hours, in violation of Section 8(a)(1) of the National Labor Relations Act (the Act). The complaint also alleges that Respondent issued a written warning to employee Keith Fleming because of his union and other protected activities, in violation of Section 8(a)(3) and (1) of the Act.

A hearing was held before me on these matters in Thomaston, Georgia, on April 5, 1990. On the entire record,

<sup>1</sup> Respondent's name appears as stipulated at the hearing.

including briefs filed by the General Counsel and Respondent, and on my observation of the demeanor of the witnesses, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent is a Georgia corporation with an office and place of business in Thomaston, Georgia, where it is engaged in the manufacture of musical instruments. During the calendar year preceding issuance of the complaint, a representative period, the Respondent sold and shipped from its Thomaston, Georgia facility finished products valued in excess of \$50,000 directly to customers located outside the State of Georgia. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The parties stipulated, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. THE ALLEGED UNFAIR LABOR PRACTICES**

*A. Fleming's Union Activities*

Fleming had been employed for about 2 years at the time of the hearing as a template fixture maker. A union campaign started in late November or early December 1989, and Fleming attended union meetings. On about December 11, during working time, Fleming notified about 10 employees that there would be a union meeting that evening, and asked them to attend. One of these was James M. White. According to Fleming, he was going to the stockroom to pick up some parts while White was coming by on a forklift. Fleming testified that this conversation took "a couple of seconds," and White affirmed that he did not stop working.

*B. Respondent's Investigation and Warning to Fleming*

**1. The conversation between White and Supervisor Craft**

*(a) Summary of the evidence*

James E. Craft Jr. was the Company's supervisor of material control and distribution.<sup>2</sup> He testified that "management" had asked him to keep it informed if he heard anything about unions. Craft also stated that several employees told him that Fleming had invited them to a union meeting. Craft told Vice President Ingram Haley of these reports, and the latter directed Craft to get statements from employees. Craft obtained several statements. One of the employees informed Craft that Fleming had also talked to White, and Craft called the latter to his office for an interview on the afternoon of December 11, the same day that Fleming had spoken to White.

White testified that Craft told him that he was not going to "have" or "provoke" a union. The supervisor gave White a pencil and pad, and directed him to write down what Fleming had said to White. White protested and asked the reason, but Craft told him to write the statement and told him that no one would get into trouble. White testified that

<sup>2</sup> The pleadings establish that Craft was a supervisor and an agent of Respondent within the meaning of the Act.

he “didn’t have any choice.” The statement reads: “Keith Fleming informed me of a union meeting at Best Western Motel.” Beneath the text is the legend: “Time: (Maybe Break).” The words “Maybe Break” are lined out, and the words “(Before Break)” written underneath them.<sup>3</sup>

According to Craft, he told White that Vice President Haley had instructed him to get a “voluntary” statement from any employee to whom Fleming had spoken. Asked on cross-examination whether he told White that the latter’s statement was “voluntary,” Craft said that he had to think a moment before answering, and then contended that he did say this to White. However, Craft also testified that White “was leery because he felt like it might get somebody in trouble.”

Craft explained the alteration in White’s statement. When White handed it to him, Craft note the words “Maybe break.” The supervisor concluded that this must have been false because of what another employee had told him, presumably about another conversation the other employee had with Fleming. Craft then handed the statement back to White and told him to be “absolutely positively sure about the time and if he couldn’t be sure about the time there was really no need in taking the statement.” White then crossed out the words “Maybe break” and wrote “Before break.”

Craft denied telling White that the employees were not going to bring a union into the plant. However, he admitted telling White that the Union was a “crock,” and agreed that talk about unions bothered him because, he testified, “I don’t like Unions.”

#### (b) *Factual analysis*

White was a current employee at the time of his testimony. The Board has concluded in similar circumstances that such testimony is entitled to considerable weight since it is unlikely to be false when it is adverse to an employee’s pecuniary interest, such as preservation of a job.<sup>4</sup> Further, Craft’s testimony partially corroborates White. The latter was a more credible witness than Craft, who, I conclude, was biased.<sup>5</sup> I find that Supervisor Craft directed White to write a statement concerning what Fleming had said to White, and thereafter induced White to change the document so as to indicate that Fleming’s statement was made “before break,” i.e., during working time rather than during a break period. As indicated, this was factually correct. Further, Craft told White that he was not going to have a union in the plant.

### 2. Respondent’s conversations with and warnings to Fleming

#### (a) *Summary of the evidence*

Phil H. Leverett was Respondent’s administration manager.<sup>6</sup> He testified that Company Vice President Haley in-

formed him that Fleming, during working time, was asking employees to attend union meetings. Leverett then had a number of conversations with Fleming. According to Leverett, the first of them took place on December 11, the same day that Fleming spoke to employees. Fleming, in response to a leading question, affirmed that his initial conversations with Leverett occurred several days after his conversations with employees. The evidence shows that Leverett was accompanied by Fleming’s supervisor, Lewis Eaton, during the first meeting.

Fleming testified that Leverett told him that he was “soliciting,” and that he “could not talk about the Union during working hours.” Fleming replied that, if the employees could talk about football, they could talk about the Union. Leverett argued that talk about the Union would offend people and gave Fleming a writeup which the latter read and signed. All Fleming could remember about the document was that it said he would be discharged if he continued to talk about the Union. Fleming asked for a copy of the writeup, but Leverett replied that the copying machine was malfunctioning, and that Leverett would give him a copy at a later time.

Leverett testified that Fleming raised the subject of employees talking about sports (baseball), and contended that this caused some “confusion” in his mind. He argued that discussing sports was different from asking some one to go to a union meeting because the latter constituted “solicitation.” Since there was some doubt about the matter, Leverett asserted, he told Fleming that he would get “clarification” rather than “issue” the warning. Asked by company counsel whether he told Fleming that he was “withdrawing” the writeup, Leverett replied, “Not at that point; we said that it would need to be clarified.” Leverett denied that he told Fleming that the reason for not giving him a copy of the writeup was a malfunctioning copying machine—rather, Leverett averred, the reason was Leverett’s doubt that the warning constituted a “correct notice.” Leverett did not deny Fleming’s testimony that Leverett said Fleming could not talk about the Union during working hours. Supervisor Eaton did not testify.

Fleming attempted to get a copy of the warning on two occasions the same day. At lunchtime, he testified, Leverett said that he had “re-read” the law, and had to rewrite the warning because there were “some disagreements” in it. Leverett agreed that he spoke to Fleming at lunch, and told him that the matter had not yet been “clarified.” Fleming sought out Leverett again at the end of the day and the same exchange took place. Fleming did not obtain a copy of the warning.

Fleming testified that “right after” he received the first warning, he told other employees that the Company had “written [him] up” for talking about the Union. James White affirmed that Fleming told him that Leverett had “written him up” for informing White and others about a union meeting. According to White, both he and Fleming were “upset” and “worried.”

Fleming had another meeting with Leverett at which he was given an “Employee Action Report” dated December 12, 1989,<sup>7</sup> a Tuesday. Although this date was only 1 day after the December 11 conversations between Fleming and Leverett, Fleming testified that he received the document on

<sup>3</sup>G.C. Exh. 3.

<sup>4</sup>*Bohemia, Inc.*, 266 NLRB 761, 764 fn. 13 (1983); *Southern Paint & Waterproofing Co.*, 230 NLRB 429, 431 fn. 11 (1977).

<sup>5</sup>The Company elicited testimony from White that he was “upset” with Craft because the latter, subsequent to the interview, issued an adverse appraisal of White which he thought was unfair. White testified that he told the supervisor that he would try to improve. I have carefully considered this evidence. It is insufficient to offset the reasons for crediting White which are set forth above.

<sup>6</sup>The pleadings establish that Leverett was a supervisor and an agent of Respondent within the meaning of the Act.

<sup>7</sup>G.C. Exh. 2.

Friday of the same week, i.e., December 15. Leverett initially contended that this meeting took place on December 12, but conceded that it may have been on Friday of the same week.

Leverett carried the first writeup into the meeting. Fleming somehow obtained possession of it, and said that he wanted a copy because he had signed it. Leverett took it back, said that it was “no good” and that a copy would not be in Fleming’s file, and tore it up. He then gave Fleming the December 12 “Employee Action Report,” which “cautioned” Fleming for “soliciting” during working time.<sup>8</sup> He did not tell Fleming that the first warning would not be repeated. White testified that he heard nothing about the first warning being torn up, and that the Company did not say anything about the matter.

### (b) *Factual analysis*

I conclude from Fleming’s un rebutted testimony that during his first meeting with Leverett on December 11, the latter told him that he could not talk about the Union during working hours. Leverett then gave Fleming a “writeup” which the latter signed. It stated, at least in part, that Fleming would be discharged if he continued to talk about the Union. Leverett refused to give Fleming a copy when the latter protested. Although the administration manager told Fleming that the writeup needed “clarification,” he specifically testified that it was not withdrawn “at that point.”<sup>9</sup>

On the next day, December 12, Fleming told another employee that he, Fleming, had received a writeup for telling employees about a union meeting. Both employees were upset.

I conclude that the next meeting between Leverett and Fleming took place 3 days later, on December 15. Leverett tore up the original writeup, told Fleming that it was invalid, and said that a copy would not be in Fleming’s file. At the same time, Leverett gave Fleming the “Employee Action Report” dated December 12.

There is no evidence that the Company told any other employee about invalidation of the first writeup or its oral rule to Fleming, or gave assurances that any such action would not be repeated in the future.

## 3. Respondent’s written no-solicitation rule

### (a) *Summary of the evidence*

At all times material, Respondent maintained a written rule stating that “[s]oliciting for any cause on company premises during an employee’s working time or distributing literature of any kind in working areas during an employee’s working time or otherwise, or soliciting or distributing literature so as to interfere with employees who are themselves working is

prohibited.”<sup>10</sup> As explicated at the hearing, the General Counsel’s position is that the written rule is facially unobjectionable, but that it was disparately and therefore unlawfully applied. In addition, the General Counsel argues that an unlawfully broad rule was orally promulgated.

Fleming testified that he purchased raffle tickets from an employee in the plant during working time and that Girl Scout cookies were also sold. These activities were conducted “openly.” White affirmed without contradiction that he purchased raffle tickets from Supervisor Craft “during working time,” and that Craft told him that the employees “could talk about anything” as long as they did not stop working. White further stated that there was a “flower fund” for hospitalized family members of employees, and that an employee collected contributions from other employees for this fund “during working hours.”<sup>11</sup>

Administration Manager Leverett contended that any form of “solicitation” constitutes a violation of company policy. This would include, according to Leverett, one employee asking another to go to a football game. Company policy with respect to such solicitation depends on individual circumstances, particularly whether the solicited employee is engaged in dangerous work. Therefore, different types of solicitation are treated differently. Leverett acknowledged that the company sponsors hunting and fishing events, and that notices pertaining to these matters are posted on a bulletin board. He denied knowledge of the sale of raffles but admitted knowledge of the collection of money for hospitalized family members.

Supervisor Craft testified that he organizes various functions which the company sponsors—hunting, fishing, and archery contests, and softball games. Craft signs up employees for these events, and was uncertain whether he did so “only” during break periods. Notices of these events are posted on a bulletin board. In addition, Craft instructs the telephone operators to make announcements concerning these events “over the intercom . . . ten or fifteen minutes before the time to get off work.”

Craft testified that every one in his department had signed up for the “flower fund,” and that an employee collected money for it, although Craft stated that he did not know whether collection took place during working time. Requests for United Way contributions take place during an annual “birthday luncheon . . . during normal lunch hours.” This is the “only charitable organization that Yamaha supports.” Craft has asked on direct examination whether he was aware of any other type of solicitation “for charitable functions” which took place “during time when employees were supposed to be working.” Craft answered, “Not charitable functions.” He was then asked whether he was aware of “any type of solicitation,” but direct examination was terminated without an answer to this question.

### (b) *Factual analysis*

Despite Respondent’s printed rule prohibiting “solicitation” during “working time,” the evidence establishes that it permitted and engaged in such activity. I credit White’s uncontradicted testimony that Supervisor Craft sold raffle

<sup>8</sup>The reason for the report is said to be a “policy violation,” and reads:

Your approaching YMM employees in their work areas and/or during their or your work time in soliciting for any reason is prohibited. This is to remind you of that fact and advise you that any further violation of Company policy may result in disciplinary action from counselling up to and including termination (G.C. Exh. 2).

<sup>9</sup>Whether Leverett gave a malfunctioning copying machine as the reason for his failure to give Fleming a copy—as Fleming asserted—did not do so because of his doubts about the accuracy of the first writeup is not particularly significant. I conclude that Leverett first gave the copying machine explanation, and, later during the same day, told Fleming that the matter had not yet been clarified.

<sup>10</sup>R. Exh. 2.

<sup>11</sup>Fleming and White also testified about announcements posted on a bulletin board about various matters, including a hunting and fishing club, and White’s forthcoming marriage.

tickets during working time, and Craft's admission that he caused announcements of various activities unrelated to work to be made to employees over a public address system a few minutes before work ended. It is obvious that these announcements were made during working time. Since they reached all employees who could hear them without regard for the possibly hazardous type of work in which the employees were engaged, Leverett's attempt to distinguish solicitations based on this factor has no meaning. As White put it, Supervisor Craft stated that the employees could talk about "anything" as long as they continued to work. There is no evidence that Fleming's conversations with employees caused any of them to stop working. With respect to his conversation with White, the evidence shows that this took only a "couple of seconds" and that White did not stop working.

In addition to Craft's participation in these activities, Leverett admitted knowledge of employee collections for the "flower fund." As noted, Craft, when asked whether he knew of any types of solicitation during working time other than those for the United Way, replied, "Not charitable functions." The only reasonable interpretation of this testimony is that Craft did have knowledge of other, noncharitable solicitations taking place during working time and I so find.

As noted, the complaint alleges both an unlawful rule against talking about the Union, and unlawful discrimination against Fleming. Fleming's testimony that Leverett, on December 11, told him he could not talk about the Union during working hours is rebutted. Although there is evidence that Respondent destroyed its original written warning to Fleming and substituted another, there is no evidence that it ever said anything further about Leverett's oral statement on December 11. The substituted warning given Fleming on December 15 says nothing specific about that statement, while Leverett's action and language on December 15 pertained only to written warnings.

### C. Legal Analysis and Conclusions

#### 1. Alleged unlawful solicitation to report on union activities of other employees

The facts as summarized show that shortly after the advent of a union campaign and invitations to a union meeting by Fleming, a union supporter, Respondent's supervisor Craft told employee White that the latter was not going to "have" or "provoke" a union. White was not a union supporter at the time. Craft directed White to write down what Fleming had said to White—saying that it would not get anybody into trouble. White protested but finally complied with what he perceived to be an order. After he did so, Craft induced White to alter his statement so as to establish that Fleming's invitation took place during working time—which was, in fact, true.

In *Rossmore House*, 269 NLRB 1176 (1984), enfd. 760 F.2d 1006 (9th Cir. 1985), the Board held that, with respect to interrogation of open and active union supporters, it would assess the legality of the interrogation under all the circumstances, and determine whether it reasonably tended to restrain, coerce, or interfere with rights guaranteed by the Act. White was not an open and active union supporter. However, the Board has applied the *Rossmore* test to instances where the employee involved was not a union activist. *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985).

Respondent's hostility to the Union was manifested to White by Craft's statement that he was not going to "have" or "provoke" a union. Craft's interrogation took place soon after the advent of the union campaign and was opposed by White. Although White's correction of the statement, induced by Craft, conformed with the facts, Craft's insistence on the change shows that Respondent was attempting to establish a case against Fleming, and thus further manifested to White the Company's union animus. Although Respondent's position is that it was merely attempting to enforce a valid no-solicitation rule, I hereinafter reject this defense. Accordingly, Craft had no legitimate business reason for his interrogation of White.

The Board has concluded that an interrogation as to the identity of a person who started a union violated Section 8(a)(1). *Sorenson Lighted Controls*, 286 NLRB 969, 976-977 (1987).<sup>12</sup> I conclude that Craft's interrogation of White tended to coerce White, and, accordingly, was unlawful.<sup>13</sup>

#### 2. The alleged unlawful no-solicitation rule or rules

As noted, the complaint alleges only that Respondent unlawfully prohibited its employees from talking about the Union during working hours. At the hearing, counsel for the General Counsel more fully explained her position as an allegation of an unlawfully broad oral rule, and disparate application of a facially unobjectionable written rule. Both issues were fully litigated.

Supervisor Leverett's verbal statement to Fleming on December 11, that he could not talk about the Union during working hours, was an unlawfully broad rule.<sup>14</sup>

With respect to the written rule, the Board has held with judicial approval that selective application of an otherwise lawful no-solicitation rule, so as to bar only union activities, is unlawful.<sup>15</sup> In a case with factual similarities to the instant proceeding, the Board stated:

We find . . . that Respondent disparately enforced its no-solicitation rule by permitting its employees to sell such items as candy, cookies, and Christmas posters, etc., and to raffle a chain saw, while precluding them from engaging in organizational activities. We further find that Respondent admittedly allowed employees . . . to solicit for a "flower fund" for employees and their families in the event of sickness or death, which is further evidence that Respondent disparately enforced its no-solicitation rule. [*Hammary Mfg. Corp.*, 258 NLRB 1319 fn. 2 (1981).]

<sup>12</sup> See also, in addition to the cases cited in *Sorenson*, *Corrugated Partitions West*, 275 NLRB 894, 985 (1985); *F. Mullins Construction*, 273 NLRB 1016, 1023 fn. 1 (1984); and *Horizon Air Services*, 272 NLRB 243, 253 (1984).

<sup>13</sup> Respondent cites *Consolidated Edison Co.*, 280 NLRB 338 (1986), where the Board found that interrogation concerning an employee's union activities was not unlawful. However, in that case the employee in question was not only soliciting on working time, but was also interfering with the work activities of other employees. There is no evidence of that here. See sec. 3, *infra*.

<sup>14</sup> *Angelica Healthcare Services*, 284 NLRB 844 (1987); *Southwest Gas Corp.*, 283 NLRB 543 (1987); *Highland Steam Laundry*, 272 NLRB 1056 (1984); *Our Way, Inc.*, 268 NLRB 394 (1983).

<sup>15</sup> *NLRB v. S. E. Nichols, Inc.*, 862 F.2d 952 (2d Cir. 1988), enfg. as modified 284 NLRB 556 (1987); *Marathon LeTourneau Co. v. NLRB*, 699 F.2d 248 (5th Cir. 1983), enfg. 256 NLRB 350 (1981); *T & H Investments*, 291 NLRB 409 (1988); *Our Way, Inc.*, *supra*; *Timken Co.*, 236 NLRB 757 (1978).

The fact in this case that a supervisor as well as employees was involved in the solicitation adds weight to a conclusion that the rule was disparately applied.

Respondent argues that any unlawful restriction on Fleming's activities was "clarified promptly" by the second written warning,<sup>16</sup> which was actually given to Fleming on December 15. This argument has no merit. In the first place, there is nothing "clear" about the second warning because of its use of the combined conjunction "and/or."<sup>17</sup> On one interpretation, the warning could be read so as to bar solicitation in work areas at any time. It is not a paraphrase of Respondent's written rule, and is ambiguous.

In sum, Respondent first told Fleming that he could not talk about the Union during working hours, and then gave him a written warning stating in part that he would be discharged if he continued to talk about the Union. Although Respondent refused to give him a copy, it did not withdraw the warning "at that point."

Four days later, Respondent tore up the first warning but then issued one to Fleming which has the ambiguity noted above. At the same time, Respondent maintained a facially unobjectionable written rule which it disparately enforced. The natural result of all this was the creation of confusion in the minds of the employees about their solicitation rights. This in itself is a ground for finding Respondent's rules to be unlawful. *MGM Grand-Reno, Inc.*, 249 NLRB 961 (1980), *enfd.* as modified 653 F.2d 1322 (9th Cir. 1981).

Respondent argues that its asserted "clarification" made it unnecessary for it to "repudiate" any prior unlawful action.<sup>18</sup> There was no clarification. In order to relieve itself of liability, Respondent would have had to make a timely, unambiguous and specific repudiation of its unlawful conduct. Further, it would have been required to make an adequate publication of the repudiation to the employees involved, to have refrained from engaging in unlawful conduct after the repudiation, and to have given employees assurances that it would not interfere with employee rights in the future. *Passavant Memorial Area Hospital*, 237 NLRB 138 (1978). It is clear that Respondent did not meet these requirements.<sup>19</sup>

For the foregoing reasons, I conclude that Respondent issued an unlawfully broad oral rule prohibiting employee discussion about the Union during working hours, and disparately enforced a written no-solicitation rule so as to prohibit only union activity, in violation of Section 8(a)(1) of the Act.

### 3. The alleged discrimination

The General Counsel has the burden of establishing a *prima facie* case that is sufficient to support an inference that protected conduct was a motivating factor in Respondent's decision to discipline an employee. Once this is established, the burden shifts to Respondent to demonstrate that the discipline would have been administered even in the absence of the protected conduct.<sup>20</sup>

Supervisor Craft's unlawful interrogation of employee White, accompanied by the statement that White was not going to have a union, and Respondent's unlawful no-solicitation rules manifest the Company's animus against the Union. Fleming was a union activist, and the General Counsel has established a *prima facie* case that this activity was a motivating factor in Respondent's decision to issue a warning to him.

There is no evidence that Fleming interfered with the work activity of any employee. Although Respondent interviewed and took statements from several employees about Fleming's union activities, none was called as a witness. The only evidence, from Fleming and White, shows that their conversation, although on worktime, took only "a few seconds," and that White did not stop working. This brief exchange is insufficient to establish violation of a no-solicitation rule. *Lamar Industrial Plastics*, 281 NLRB 511, 513 (1986).

Moreover, Respondent has not sustained its position that it was merely trying to enforce a valid no-solicitation rule. On the contrary, its rules, or their disparate application, were themselves unlawful. Accordingly, I conclude, by issuing a written warning to Fleming on December 15, 1989, because of his protected concerted activity, Respondent thereby violated Section 8(a)(3) and (1) of the Act. *Cerock Wire & Cable*, 274 NLRB 888 (1985).

In accordance with my findings above, I make the following

### CONCLUSIONS OF LAW

1. The Respondent, Yamaha Music Manufacturing, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Industrial Union Department, AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the following conduct, Respondent committed unfair labor practices within the meaning of Section 8(a)(1) of the Act:

(a) Coercively interrogating an employee as to statements made to him about the Union by another employee.

(b) Orally promulgating a no-solicitation rule so as to prohibit employees from talking about the Union during working hours.

(c) Selectively applying a written no-solicitation rule so as to prohibit only union activities.

4. By issuing a warning to employee Keith Fleming because he engaged in protected concerted activities, Respondent violated Section 8(a)(1) and (3) of the Act.

5. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

### THE REMEDY

Respondent argues that no remedy is required in this case, citing Board dismissals of allegations in *Consolidated Edison Co.*, *supra*, and *East Bay Newspapers*, 263 NLRB 566 (1982). In the former case, a supervisor clarified a former prohibition against solicitation by adding that it must not interfere with the work of other employees. There was no such clarification here. In the second cited case, although the employer's no-solicitation rule was valid under Board law at

<sup>16</sup> R. Br. 14.

<sup>17</sup> *Supra*, fn. 8.

<sup>18</sup> R. Br. 14.

<sup>19</sup> See *Red Arrow Freight Lines*, 289 NLRB 227 (1988).

<sup>20</sup> *Wright Line*, 251 NLRB 1083 (1980), *enfd.* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983).

the time it was promulgated<sup>21</sup> but was later unlawful under a new standard,<sup>22</sup> the employer changed its rule so as to conform to the Board's revised standard on solicitation rules.<sup>23</sup> The rationale for dismissal of this technical violation is inapplicable here.

Accordingly, inasmuch as Respondent has been found to have engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

It having been found that Respondent orally promulgated an unlawful rule prohibiting employee discussion of the Union during working hours, and disparately enforced a written no-solicitation rule so as to prohibit only union activity, I shall recommend that it be required to rescind such rules.

It having been found that Respondent, on December 15, 1989, issued a written warning to employee Keith Fleming because he engaged in protected concerted activity, it will be recommended that Respondent remove from its personnel records all references to such warning, and notify Fleming in writing that it has done so and that evidence of the warning will not be used as a basis for future personnel action against him.

It will also be recommended that Respondent post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>24</sup>

#### ORDER

The Respondent, Yamaha Music Manufacturing, Inc., Thomaston, Georgia, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Coercively interrogating employees concerning their union activities or sympathies, or the union activities or sympathies of other employees.

(b) Promulgating or enforcing rules which discriminatorily prohibit employees from talking about the Union during working hours, or which disparately enforce no-solicitation rules so as to prohibit only union activity.

(c) Discouraging membership in Industrial Union Department, AFL-CIO, or any other labor organization by issuing warnings to employees because of their protected concerted activity, or by discriminating against them in any other manner with regard to their hire, tenure of employment, or terms and conditions of employment.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its rule prohibiting employee discussion of the Union during working hours, and terminate its application of

its written no-solicitation rule which caused the latter to prohibit only the union activities of its employees.

(b) Remove from its personnel records all references to its unlawful written warning given to Keith Fleming on December 15, 1989, and notify Fleming in writing that it has done so, and that evidence of the warning will not be used as a basis for future personnel action against him.

(c) Post at its Thomaston, Georgia plant copies of the attached notice marked "Appendix."<sup>25</sup> Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>25</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate employees concerning their union activities or sympathies, or the union activities or sympathies of other employees.

WE WILL NOT promulgate or enforce rules which discriminatorily prohibit employees from talking about the Union during working hours, or which disparately enforce no-solicitation rules so as to prohibit only union activity.

WE WILL NOT discourage membership in Industrial Union Department, AFL-CIO, or any other labor organization, by issuing warnings to employees because of their protected concerted activity, or by discriminating against them in any other manner with regard to their hire, tenure of employment, or terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

<sup>21</sup> *Essex International*, 211 NLRB 749 (1974).

<sup>22</sup> *T.R.W. Bearings*, 257 NLRB 442 (1981).

<sup>23</sup> The Board has since returned to the rule in *Essex International*, *supra*. *Our Way, Inc.*, *supra*.

<sup>24</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

WE WILL rescind our rule prohibiting employee discussion of the Union during working hours, and terminate our application of our written no-solicitation rule which caused it to prohibit only the union activities of our employees.

WE WILL remove from our personnel records all references to our unlawful written warning issued to Keith Fleming, and

notify Fleming in writing that we have done so, and that evidence of the warning will not be used as a basis for future personnel action against him.

YAMAHA MUSIC MANUFACTURING, INC.